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### Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness

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# MULTICULTURAL LAWYERING: TEACHING PSYCHOLOGY TO DEVELOP CULTURAL SELF-AWARENESS

CARWINA WENG\*

*Much of the current literature in multicultural lawyering focuses on learning substantive information about clients who are culturally different from the lawyer, such as how the client's culture perceives eye contact or reacts to science-based world views. This article notes that such a focus sidesteps the human reality that every person reacts to people who are different from him- or herself unconsciously in ways that may be culturally insensitive and discriminatory and that this human reaction occurs despite awareness of the general values, attitudes, and beliefs of the client's culture. It therefore suggests that multicultural lawyering training should begin with the lawyer's self-analysis of his/her culture and its influences on the lawyer. Such cultural self-awareness is considered in social science to be the key to multicultural competence, because awareness of one's own culture allows more accurate understanding of cultural forces that affect the lawyer, the client, and the interaction of the two. Specifically, the article offers a framework for learning cultural self-awareness, starting with the teaching of cognitive and social psychology. This psychology would include an understanding of the unconscious mechanisms by which every person categorizes others and the use every person makes of these categories as s/he encounters culturally different persons. It also provides real-life examples of how unconscious categorization affects behavior and how cultural self-awareness can enable more accurate, client-centered lawyering.*

The fiftieth anniversary of the decision in *Brown v. Board of Education*<sup>1</sup> and the Supreme Court's decisions in the Michigan affirmative action cases<sup>2</sup> have reenergized our national conversation regarding

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<sup>1</sup> 347 U.S. 483 (1954)

<sup>2</sup> White applicants who were denied admission to the University of Michigan at Ann Arbor's undergraduate college and law school sued the university to challenge its affirmative action programs. The undergraduate college used a point-allocation system, by which racial and ethnic minorities could receive up to 20 points for their racial/ethnic membership. Points also were awarded for academic excellence, as demonstrated by GPA and test scores, athletic prowess, other talents, geographic diversity, etc. An applicant typically

diversity. The Court's endorsement of diversity in *Grutter v. Bollinger* as "essential" to quality education, preparation for work in a global economy, cross-racial understanding, and decreasing prejudice<sup>3</sup> was unexpected.<sup>4</sup> A core premise of this endorsement is that "the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."<sup>5</sup> This article considers the implications of the Court's rationale as well as the rationale that is missing - the ongoing role affirmative action plays in redressing past and current discrimination<sup>6</sup> - for training law students to practice with multicultural competence.

My concerns with the Court's emphasis on exposure to diverse students are twofold. First, this emphasis ignores ongoing discrimination faced by members of nondominant cultures. Now, diversity is acceptable because it helps white students compete in a global marketplace rather than because it helps to redress past and ongoing discrimination.<sup>7</sup> Second, by ignoring ongoing discrimination, the Court's emphasis on exposure suggests that structural diversity<sup>8</sup> alone

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needed 100 out of 150 points to be admitted right away. The Supreme Court struck down this system as approximating a quota because the allocation of points did not allow sufficiently individualized review of each applicant. *Gratz v. Bollinger*, 539 U.S. 244, 266 (2003). The law school utilized a more individualized, holistic admissions process, with the goal of achieving a "critical mass" of racial and ethnic minority members. This process was upheld as constitutional. *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

<sup>3</sup> *Grutter*, 539 U.S. at 324-25.

<sup>4</sup> Lyle Denniston, *High Court's Course Debated after Rulings Two Key Civil Rights Decisions Mark Shift from Conservatism*, BOSTON GLOBE, June 30, 2003, at A3; Jan Crawford Greenberg, *High Court Rulings Stun the Right Decisions on Race, Gays Show Justices' Knack for Surprise*, SUN SENTINEL (Ft. Lauderdale, FL, Broward Co. Metro ed.), June 29, 2003, at 4A; Linda Greenhouse, *The Supreme Court: Overview; In a Momentous Term, Justices Remake the Law, and the Court*, N.Y. TIMES, July 1, 2003, at A1; Tony Mauro, *It's a Mad, Mad, Mad, Mad Court/Justices Upended Expectations in 2002-2003 Term*, TEXAS LAWYER, July 7, 2003, at 12; and Martin Michaelson, *The Court's Pronouncements Are More Dramatic and Subtle Than the Headlines*, CHRON. OF HIGHER EDUC., July 18, 2003, at Review 11.

<sup>5</sup> *Grutter*, 539 U.S. at 321 (citations omitted). Justice O'Connor relied on the briefs of the respondent law school and numerous *amici* from the business world and the military in reaching her conclusion. *Id.* at 334.

<sup>6</sup> As Justice Ginsburg noted, "In the wake of 'a system of racial caste only recently ended', large disparities endure. Unemployment, poverty, and access to health care vary disproportionately by race. Neighborhoods and schools remain racially divided." *Gratz*, 539 U.S. at 299-300 (Ginsburg, J., dissenting).

<sup>7</sup> For a discussion of the rise of market-based rationales for diversity in the legal profession and their effect on social justice and equal opportunity, see generally David B. Wilkins, *From "Separate is Inherently Unequal" to "Diversity is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004).

<sup>8</sup> Structural diversity refers to the "levels of diversity" in an institution. Brief for the American Psychological Ass'n as Amicus Curiae in Support of Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), available at 2002 US Briefs 241, 17 (2003) (hereinafter APA amicus brief); Expert Report of Patricia Gurin, Theoretical Foundations

could paper over the lasting effects of a history of prejudice and discrimination and create culturally competent workers within one generation.<sup>9</sup> Such a suggestion minimizes the need for institutional support for diversity<sup>10</sup> and acknowledgement that discrimination continues. Without such support, “[a] campus could be full of minority students yet still have a segregated environment without meaningful interactions between different racial and ethnic groups.”<sup>11</sup> Indeed, students from culturally diverse backgrounds might face pressure to contribute diverse cultures, ideas, and viewpoints to the classroom experience<sup>12</sup> and to be diverse in a way that is “global,” or international, rather than domestically American.<sup>13</sup> In short, an emphasis on exposure alone maintains the perception of diverse students as “the other” and absolves students in the dominant American culture from understanding their own culture and the ways in which that culture - especially its legacy of discrimination - affects their interactions with other

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at 4, *Gratz v. Bollinger*, 122 F. Supp. 2d 811 (E.D. Mich. 2000) (No. 97-75321) and *Grutter v. Bollinger*, 137 F. Supp. 2d 821 (E.D. Mich. 2001) (No. 97-75928), available at <http://www.umich.edu/~urel/admissions/legal/expert/gurintoc.html> (last visited July 29, 2004) (hereinafter *Gurin Report*).

<sup>9</sup> *Grutter*, 539 U.S. at 342. Justice O'Connor evinced the hope that, given the progress in minority enrollments since the decision in *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978), “25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.” *Id.* at 343. Justice Thomas went farther still, opining “While I agree that in 25 years the practices of the law school will be illegal, they are, for the reasons I have given, illegal now.” *Id.* at 362 (Thomas, J., dissenting).

<sup>10</sup> Full institutional support for cultural competence would allow the institution itself to become culturally competent. For this development to occur, the institution would need to value diversity, engage in self-assessment of its own culture, develop means to accommodate difference, integrate cultural competence into the institution, and adapt to diversity. Carolyn Capps Hartley & Carrie J. Petrucci, *Justice, Ethics, and Interdisciplinary Teaching and Practice: Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration between Social Work and Law*, 14. WASH. U. J.L. & POL'Y 133, 171-73 (2004).

<sup>11</sup> APA amicus brief, *supra* note 8, at 18. The emphasis in the Michigan cases was, of course, on racial and ethnic diversity. The arguments advanced in these cases as well as in this article apply as well to a broader definition of diversity.

<sup>12</sup> Perry Bacon, Jr., *How Much Diversity Do You Want from Me?* TIME, July 7, 2003, at 108. Bacon, an African-American journalist at TIME, comments, “O'Connor’s diversity rationale doesn’t just pressure colleges to admit more minority students. It gives me and other underrepresented minority students an added burden: delivering diversity. It creates expectations that I have a uniquely black viewpoint to contribute and that part of my responsibility as a student or worker is to do that.” *Id.* In essence, a new stereotype is being created, and people of color may feel “stereotype vulnerability,” or pressure to behave in conformity with the stereotype. Marc R. Poirier, *Gender Stereotypes at Work*, 65 BROOK. L. REV. 1073, 1098-99 (1999).

<sup>13</sup> The emphasis on multicultural competence to function in a global marketplace suggests that such competence is necessary to interact with non-Americans, and this suggestion in turn implies that, domestically, all Americans, regardless of cultural background (racial, ethnic, sexual orientation, socioeconomic class, etc.) are sufficiently uniform as to cultural background and power that multicultural competence need not be developed as to them.

individuals.

The literature on developing multicultural competence, fortunately, does not adopt so simplistic a perspective. Empirical studies in the social sciences support the need for educational initiatives specifically designed to teach multicultural competence<sup>14</sup> in combination with meaningful exposure to multicultural interactions.<sup>15</sup> Through these studies, consensus has arisen that multicultural competence begins with cultural self-awareness.<sup>16</sup> Cultural self-awareness is the key because it enables us to “recognize that as cultural beings, [we] may hold attitudes and beliefs that can detrimentally influence [our] perceptions of and interactions with individuals who are ethnically and racially different from [our]selves.”<sup>17</sup>

However, within the newer world of multicultural competence training for lawyers, “diversity” training for lawyers often replicates the fallacies of the *Grutter* decision. At training sessions I have attended, the most common response to why such training is important is that the clients are ethnically and racially different from the lawyers. This response is not wrong, but it is superficial. It leads attendees to clamor for concrete skills<sup>18</sup> (how do I interview a client who is cultur-

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<sup>14</sup> For a comprehensive review and listing of such empirical studies, see Gurin Report, *supra* note 8, at Appendix B. See also Cruz Reynoso & Cory Amron, *Diversity in Legal Education: A Broader View, A Deeper Commitment*, J. LEGAL EDUC., 491, 503-05 (2002) (encouraging law schools to “foster pedagogical and curricular innovation” to promote diversity’s values).

<sup>15</sup> See, e.g., APA amicus brief, *supra* note 8, at 12-15 and studies cited therein.

<sup>16</sup> See, e.g., American Psychological Ass’n, *Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists* (August 2002), available at <http://www.apa.org/pi/multiculturalguidelines/formats.html> (hereinafter APA Guidelines); Patricia Arredondo & G. Miguel Arciniega, *Strategies and Techniques for Counselor Training Based on the Multicultural Counseling Competencies*, J. MULTICULTURAL COUNSELING AND DEV. 263, 266 (2001); PAUL B. PEDERSEN, *CULTURE-CENTERED COUNSELING INTERVENTIONS: STRIVING FOR ACCURACY* 203 (1997); DERALD W. SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE* 17 (3d ed. 1999).

<sup>17</sup> APA Guidelines, *supra* note 16, at 17. The APA places self-awareness as the first of its guidelines for multicultural counseling. Note that the APA Guidelines deal solely with racial and ethnic cultural competence. Its strictures, however, also apply to other kinds of cultural diversity, which are included in this article.

<sup>18</sup> See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyering*, 8 CLIN. L. REV. 33 (2001) (espousing the five habits as “a process to avoid cultural blinders and recover from cultural blunders”); Paul R. Tremblay, *Interviewing and Counseling across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373 (2002) (offering “concrete ways to change behavior, especially drawing on other field’s exploration of cross-cultural interaction”). These authors do not ignore the need for cultural self-awareness. Bryant, *supra* note 18, at 48-63; Michelle S. Jacobs, *People from the Footnotes: the Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 374-91 (1997); Tremblay, *supra* note 18, at 385-87, 407-16. Indeed, Tremblay recommends that lawyers develop some familiarity with cultural identity development theory, which generally recognizes stages in progression of cultural consciousness. *Id.* at 414-15. However, it is

ally different from me?) and trainers to omit deeper discussions of multicultural competence, including the connections between culture, behavior, and discrimination. As a result, much training encourages attendees to take shortcuts that reinforce the perception of the client as “the other” and to avoid developing cultural self-awareness.<sup>19</sup>

The partial solution I offer today is to teach law students cognitive and social psychology relevant to multicultural lawyering. With such an understanding, law students and we clinicians might learn how people absorb information from the cultures we inhabit and encounter to form social constructions<sup>20</sup> about people, how these constructions might include stereotypes about people different from ourselves, and how these constructions might lead to (un)conscious discrimination toward out-group members, even in individuals who consider themselves to hold progressive attitudes on diversity.<sup>21</sup> We might also

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easy to leapfrog over cultural self-awareness, especially as members of a dominant culture are often unaware that such a culture exists. *See infra* p. 399.

Other authors have written expressly about the relevant psychology but as a means of understanding the actions of others, not the attorney herself. *See, e.g.,* STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS* 130-32 (2<sup>ND</sup> ed. 2003) (understanding how clients create narratives and how courts and juries perceive them); Poirier, *supra* note 12, at 1086-116 (accounting for ongoing gender discrimination in employment); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 *STAN. L. REV.* 1161, 1186-217 (1995) (same); Kim Taylor-Thompson, *Empty Voices in Jury Deliberations*, 113 *HARV. L. REV.* 1261, 1276-308 (2000) (understanding dynamics of juries that include women and racial/ethnic minorities). One exception is ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* 19-57 (1990), which includes a chapter on “Helping Theories” designed to assist students to understand themselves as helpers. This chapter does not explicitly address multicultural lawyering.

<sup>19</sup> *See infra* pp. 383-89.

<sup>20</sup> Social constructions are “cultural characterizations or popular images individuals hold that serve to define certain groups in society.” Constructions involving race or ethnicity in particular are strongly held, and the more strongly held a construction is, “the more resistant are the attitudes associated with [it] to new and contradictory information.” Hartley & Petrucci, *supra* note 10, at 163-64.

<sup>21</sup> Given the decrease in conscious discrimination in American society, the unconscious privilege that members of the dominant American culture, usually whites, typically enjoy can increase resistance to examining issues of discrimination because exploration of ethnocentrism “challenges the common and accepted images and messages members of the majority culture have received since childhood.” *Id.* at 137-38. Yet empirical studies that measure implicit associations among racial groups and evaluative attributes (for example, pleasant and unpleasant words) suggest that unconscious and subtle forms of prejudice and discrimination still exist. These implicit association tests (IAT) ask participants to classify images representing racial groups and evaluative attributes such as pleasant or unpleasant words using two designated keys. Participants typically perform the classification more quickly when pleasant attributes share the same key as White images and when unpleasant attributes share the same key as Black images. This outcome occurs even among participants who are aware of the purpose of the test - to measure racist attitudes - and who are self-avowedly low-prejudiced. Nilanjana Dasgupta et al., *Automatic Preference for White Americans: Eliminating the Familiarity Explanation*, 36 *J. EXPERIMENTAL SOCIAL*

learn that the risk of errors in perception and judgment is even greater in professional settings such as law school clinical programs because of the power differential between the client (often a poor person of color) and the attorney, who often has access to more privileges as, for example, a member of the dominant culture or of a higher socioeconomic status.<sup>22</sup> From this base, we might better appreciate the importance of cultural self-awareness, especially the examination of the attitudes, beliefs, and knowledge that create and reinforce social constructions that can unconsciously perpetuate discrimination.<sup>23</sup>

This article proposes a framework in which to teach law students to develop self awareness, as a first step toward developing multicultural lawyering competence. The framework operates as both a conceptual underpinning and as a means to lawyer with multicultural competence, but the article itself focuses on concepts over practice. The article first reviews the development of client-centered lawyering and the recognition that dominant models of lawyering may unintentionally discriminate against indigent clients by labeling behaviors common to them as difficult and atypical. Part two considers the development of more inclusive models of lawyering based on developments in psychotherapy and social work education. Part three describes cognitive and social psychology relevant to multicultural lawyering. Finally, Part four uses the lessons of this psychology to develop a framework for teaching students to develop cultural self-

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PSYCHOL. 316, 316-18 (2000) (citations omitted). To take the IAT yourself, visit <https://implicit.harvard.edu/implicit/>.

<sup>22</sup> See BEA WEHRLY, *PATHWAYS TO MULTICULTURAL COUNSELING COMPETENCE: A DEVELOPMENTAL JOURNEY* 171 (1995) (advising psychotherapists to address cultural self-awareness, including racism, because of the power counselors have over their client's lives). Power is an important element of discriminatory behavior because the person with power has the ability to control the person with less power even through unspoken differences in role, expertise, and cultural dynamics. *Id.* at 167-68 (citations omitted). Even when the student attorney is a member of, for example, a racial or ethnic minority, she acquires aspects of power vis à vis her client due to her role as the professional with specialized knowledge and skills in the relationship. *Cf.* Michael Tlanusta Garrett et al., *Multicultural SuperVISION: A Paradigm of Cultural Responsiveness for Supervisors*, J. MULTICULTURAL COUNSELING AND DEV., 147, 148 (2001) (noting that Native American counselor in supervisory role acts symbolically in dominant position vis à vis White supervisee). How a client reacts to the student of color wielding actual or perceived power also will affect their relationship. For example, the client might request direction from a student lawyer of the same cultural group, based on an expectation that the student lawyer is better able to navigate and to understand the client's culture and the dominant one. Conversely, the client might resent the student lawyer's position because the student's age or gender might otherwise preclude the student from holding that position. See ED NEUKRUG, *THE WORLD OF THE COUNSELOR: AN INTRODUCTION TO THE COUNSELING PROFESSION* 354 (1999).

<sup>23</sup> Jacobs, *supra* note 18, at 391 (active listening, empathy are not sufficient to address cross-cultural issues; rather, lawyers need to understand why race-linked issues arise). See *infra* pp. 391-96.

awareness.

## I. FROM CLIENT-CENTERED TO MULTICULTURAL LAWYERING

Lawyers are professionals because they are trained in an area that requires intellectual skill and specialized knowledge. This training creates a power imbalance in the lawyer-client relationship: the client supposedly goes to the lawyer for assistance because the lawyer has expertise the client lacks.<sup>24</sup> Thus, in a traditional model of lawyering, the lawyer controls: she is the one who knows the law and uses this knowledge to make predictions about the best legal outcomes and to set legal strategy.<sup>25</sup>

But the traditional model of lawyering is in many respects unsatisfactory. Crafting a good solution to a client's problem could require familiarity with more than just the relevant legal facts; indeed, familiarity with more facts about the client's situation could determine whether the lawyer even is thinking about the right legal claim. Clients too might be dissatisfied with directive lawyering: humanized lawyering accords them more respect and allows them greater control over the process.<sup>26</sup> So, client-centered models of lawyering have developed. The first model, promulgated by Binder and Price,<sup>27</sup> (hereinafter the Binder-Price model) recognizes that the client has superior knowledge about her values, goals and situation, which will enable her to better choose a satisfactory resolution.<sup>28</sup> Thus, client-centered lawyering attempts to shift the power imbalance by engaging the client as a participant in the lawyering process.<sup>29</sup>

However, the original formulation of client-centered lawyering was often inapt, at least as applied to clients many students encounter in clinical and legal services practice. Critics noted that the Binder-Price model conceptualized the client as a copy of the lawyer, minus the legal know-how. This copy shared the lawyer's socioeconomic status, perspective, organizational modes, etc. - for example, related his

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<sup>24</sup> Bastress & Harbaugh, *supra* note 18, at 283 (reminding students that the lawyer-client relationship "necessarily renders the client susceptible to manipulation by the lawyer" due to the lawyer's control of the structure, agenda, and knowledge of the law). Bastress and Harbaugh warn that "domination and manipulation can only be avoided by persistent and conscientious self-control by the more powerful party." *Id.*

<sup>25</sup> DAVID A. BINDER et al., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 4 (2nd ed 2004) (hereinafter *Lawyers as Counselors*).

<sup>26</sup> *Id.* at 4-8.

<sup>27</sup> DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

<sup>28</sup> *LAWYERS AS COUNSELORS*, *supra* note 25, at 5; Krieger & Neuman, *supra* note 18, at 22.

<sup>29</sup> *LAWYERS AS COUNSELORS*, *supra* note 25, at 8; Krieger & Neuman, *supra* note 18, at 22-23.

situation in clear, chronological order - and thus was ready, willing, and able to participate in the lawyering model promulgated by Binder and Price.<sup>30</sup> Other clients, who might ramble, evince reluctance to discuss certain topics or to commence an interview, lie, or display anger or hostility were, in the Binder-Price parlance, “difficult” and “atypical.”<sup>31</sup>

The early Binder-Price model does offer some explanation as to why clients might be “difficult,” but the reasons do not take into account culture, whether based on race, socioeconomic status, or other factors, except age.<sup>32</sup> The model thus ignores the fact that culture and other power and privilege differences also affect the client’s participation in the lawyering relationship.<sup>33</sup> I recall, for example, a woman client who told me on our way to renew her restraining order that I could not understand her situation as a homeless survivor of domestic violence, who bounced from shelter to shelter with a small bag of clothes, because I have a loving husband and drove a new car. Her statement forced me to consider what motivated the perception, and I realized that she equated me with the other privileged and powerful service providers in her life, who were investigating and seemingly judging her life and behavior. I therefore adjusted my lawyering by acknowledging explicitly the class and personal differences between us, reminding her repeatedly that she had the authority to set the goals and direction for her case, and asking her more about her life with her husband, both the good and the bad, and her interests and concerns. By making these adjustments, I gave the client room to reveal her goals, interests, and concerns to me, and she confided that she had been maintaining the restraining order only because the Department of Social Services wanted her to do so. In the comfort of our improved relationship, the client vacated the restraining order, with me at her side in support.<sup>34</sup>

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<sup>30</sup> Jacobs, *supra* note 18, at 349-53; Ann Shalleck, *Constructions of the Client within Legal Education*, 45 STAN. L. REV. 1731, 1742-48 (1993).

<sup>31</sup> LAWYERS AS COUNSELORS, *supra* note 25, at 247-68.

<sup>32</sup> The current edition of LAWYERS AS COUNSELORS does address issues of multicultural counseling explicitly. See, e.g., LAWYERS AS COUNSELORS, *supra* note 25, at 32-40. It also intersperses cultural issues throughout the book by, for example, using ethnic names in hypotheticals (p. 13, 140, 323 and throughout) and acknowledging that cultural values might affect participation in decision making (p. 10).

<sup>33</sup> Shalleck, *supra* note 30, at 1742-48. By contrast, social work education emphasizes that students be aware of how their clients’ history of discrimination affects them in their interactions with the social worker as well as with groups and organizations. Social work education, therefore, recognizes that, “to interact effectively with clients, particularly in a multicultural context, the client perspective must also be acknowledged, whether it is supported by research or not.” Hartley & Petrucci, *supra* note 10, at 144.

<sup>34</sup> A typical reaction to an anecdote like this is that I did what a good lawyer ought to do anyway. My response is, yes, that’s correct. After all, in my view, multicultural law-

In "Constructions of the Client within Legal Education," Anne Shalleck points out that this undifferentiated model of client-centered lawyering in fact maintains the lawyer as the dominant player. She notes that the model favors a chronological narrative over other forms of storytelling, depends on the lawyer to determine the importance of both legal and nonlegal concerns, assumes a standardized client, and ignores power imbalances.<sup>35</sup> Thus, the Binder-Price model "uses the lawyer-client relationship to construct the interests and motivations of clients through criteria the law controls."<sup>36</sup>

Concerns about a "one-size-fits-all" training model arose among mental health professionals before they arose among law clinicians.<sup>37</sup> Derald and David Sue warned that an "ethnocentric" model of counseling teaches students to practice in a way that can harm their clients.<sup>38</sup> The model views the experiences of clients of color "from the 'White, European-American perspective' . . . [and] the focus tends to be on their pathological lifestyles and/or a maintenance of false stereotypes."<sup>39</sup> For example, a counselor might view a patient's reluctance to self-disclose as paranoia, when in fact that reluctance might be "a healthy reaction to racism" from the counselor.<sup>40</sup> The counselor might also "overshadow" a client's job-related problems with personal ones, resulting in an underdiagnosis of psychopathology.<sup>41</sup> Thus,

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ying is good lawyering. The difference is being explicit that culture matters so that a lawyer might clear up some of the assumptions occurring in both directions and make adjustments sooner, more readily, and more appropriately.

<sup>35</sup> Shalleck, *supra* note 30, at 1742-48.

<sup>36</sup> *Id.* at 1747.

<sup>37</sup> SUE & SUE, *supra* note 16, at 11-12, discussing studies dating from the late 1970s in clinical and counseling psychology that indicated the failure of the profession to "meet the particular mental health needs" of people of color.

<sup>38</sup> *Id.* at 12. Sue and Sue explored, for example, cultural differences in support structures and decision making that could lead to misunderstandings in the therapy relationship.

<sup>39</sup> *Id.* at 12. Charles R. Ridley reminds us that "judgment [about diagnoses, treatment, referrals, etc.] is biased in the direction of preexisting stereotypes when the material to be judged is ambiguous or complex," as it typically is in counseling and lawyering relationships. He therefore warns counselors "to be alert, not only to biases in judgment, but also to their personal biases as judges." CHARLES R. RIDLEY, *OVERCOMING UNINTENTIONAL RACISM IN COUNSELING AND THERAPY: A PRACTITIONER'S GUIDE TO INTENTIONAL INTERVENTION* 54-55 (1995).

<sup>40</sup> *Id.* at 62-65. Ridley describes "cultural paranoia" as "a healthy reaction to racism. The minority client who fears the White counselor and avoids self-disclosure fits this category." By contrast, "functional paranoia" is "an unhealthy psychological condition. Minority clients who have a pervasive suspicion fit this category. They would not disclose to any counselor regardless of race." *Id.* at 63.

<sup>41</sup> *Id.* at 59. Diagnostic overshadowing is defined as "the tendency of counselors to use one diagnosis to obscure or minimize the importance of another diagnosis. In such cases, counselors underdiagnose psychopathology and minimize the client's need for treatment." Ridley provides the example of a Native American college sophomore at a predominantly White university who seeks counseling at a time when she is having problems selecting a major. The counselor chooses to focus on the student's efforts to adjust to the university

mental health professionals also clearly recognized that an ethnocentric model of practice, combined with a power imbalance in favor of the professional, creates a system that permits replication of societal discrimination.<sup>42</sup>

Small wonder, then, that Michelle Jacobs should find the Binder-Price client-centered model troubling when applied to the primary consumer at her clinic, namely poor, black clients.<sup>43</sup> Jacobs reminds us that clients labeled difficult by textbooks espousing client-centered lawyering might be resisting the lawyer's invitation to participate in the lawyering process.<sup>44</sup> Rather than dismiss the client as difficult, lawyers need to ask ourselves why the client might be resisting our invitation. Might the client's response be a reaction to behavior by the lawyer who fails to recognize "the real client in her full context - culturally, politically and economically?"<sup>45</sup> Or based on the client's perception of a lawyer who is culturally different from her?

In the legal arena, as Jacobs warned, attorneys who learn an ethnocentric model may be ill-equipped to perceive and understand different values and world views presented by their clients. These blinders - often unconscious and unintentional - can result in a lawyer's misperception of culturally-based behaviors by her client or of her client's reactions to the lawyer's own culturally-based behaviors. They can affect the lawyer's ability to build trust and, therefore, the information the client chooses to share.<sup>46</sup> They also can determine how the lawyer frames the client's legal problem and directs the strategy.<sup>47</sup> We thus end up with lawyers trained to consider clients who do

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rather than on the student's need to select a major. In so doing, the counselor may overlook concerns about, for example, choosing not to major in Native American studies, uncertainty about sciences versus humanities, or more specific concerns related to a major.  
*Id.*

<sup>42</sup> Wehrly, *supra* note 22, at 167-68 (recognizes that power imbalance in therapeutic relationship and cultural dynamics gives counselor power to perpetuate oppression)

<sup>43</sup> Jacobs, *supra* note 18, at 352-53 (model creates an "essentialist" client, i.e., a standardized one that does not take into account people at the bottom of social hierarchy)

<sup>44</sup> *Id.* at 355-61 (critiquing client behaviors considered to be problematic through a racial culture lens)

<sup>45</sup> *Id.* at 352-53, 355. Charles Ridley points out that, "Many counselors are ineffective with minority clients because they fail to see the 'big picture.' They overlook societal factors that influence the behavior and adjustment of these clients." He therefore recommends that counselors learn of external pressures their clients encounter, such as racism and economic and educational disadvantages. Ridley, *supra* note 39, at 12. In addition, the counselor can ask the client (without judging him) the reason for the behavior so that the counselor can understand the client's response and attempt different means to facilitate client participation.

<sup>46</sup> Anthony A. Alfieri, *Stances*, 77 CORNELL L. REV. 1233, 1249 (1992); Jacobs, *supra* note 18, at 389.

<sup>47</sup> Jacobs, *supra* note 18, at 380-81, 391.

not fit the model to be at best difficult and at worst pathological.<sup>48</sup>

Consider the following situation: a white student whom I supervised was representing an African American client in a public housing eviction proceeding for nonpayment of rent. The client had told the intake worker that the rent claimed due was not owed because the housing authority had failed to grant her a legally mandated, 12-month freeze on rent once she stopped receiving public assistance benefits and began working. We accepted her case for intake. Later, the client told the student that, in fact, she owed about an additional year's worth of rent because she had not paid the rent that was based on her public assistance income. The student was dumbfounded at the client's earlier fabrication and at the fact that the client had not paid rent when, technically, she had the income to do so. The student continued the interview, asking questions about the rent that was due.<sup>49</sup> The client told the student that she had made efforts to pay the rent but that money orders had been lost or stolen and she no longer had the money order receipts.

After the interview, the student came to me to process the client's revelations. In our discussion, we learned that the student's conception of a legal client was her mother, who was involved in a minor civil case at the time and whom the student could not conceive of lying to her lawyer or not paying a bill. Through further discussion, we considered reasons for the client's initial lie, including the possibility that the client had lied to obtain a scarce intake interview. Somewhat comforted with this possibility, the student proceeded to fashion a theory and negotiation strategy for a low-amount, long payment plan based on the information the client had given.

Later, after the student had left the clinic and I was preparing for the court hearing, the client told me that she had not paid rent, not because she had lost the money orders, but because she was fed up with the paternalistic, racist, and often hostile attitude of her housing manager. She was unwilling to negotiate with him but instructed me to offer a shorter, higher-level payment plan to the housing authority lawyer who had instructed the housing manager to implement the post-public assistance rent freeze. She based this instruction on her willingness to work with a lawyer with whom she did not have a contentious history and on her desire to show her manager that she was a good and worthy tenant.

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<sup>48</sup> SUE & SUE, *supra* note 16, at 12.

<sup>49</sup> The student never asked the client why she had lied. Few students and lawyers probably would have. Had the student done so in a nonjudgmental manner, her interest in the client's motivations might have repaired harm that might have occurred from the initial reaction of judgment and assumption.

The client and I did not discuss the changes in negotiation strategy from the strategy she had authorized the student to conduct. Speculation on her motivation, however, raises questions about whether unintended discrimination (Race? Class?) affected the client's interactions with the student. It is possible that the client could have picked up the student's judgmental reaction to the client's lie, felt in that judgment a replication of the dynamic she experienced with the housing manager, and then explained her rent arrears as the product of external mischance (lost/stolen money orders) to maintain a portrayal of herself as a client worthy of assistance. With me, possibly because I was the supervisor<sup>50</sup> or a person of color or otherwise (perceived to be) more accepting of the client's circumstances and motivations, the client shared a different aspect of herself - a person with dignity and awareness of the racism she faced - and instructed me accordingly. At the same time, regardless of who her lawyer was, the client maintained control of her interest - demonstrating her worth as a tenant/client. What changed was her willingness to be explicit about her motivation.

This case and Jacobs' and Shalleck's critiques raise questions about how well the standard model of client-centered lawyering works with clients who are disenfranchised and often economically and racially/ethnically diverse from their lawyers. Even though client-centered lawyering focuses on respecting and empowering the client, it does not address the dynamics of power and subordination (historical, actual, or perceived) in the attorney-client interaction. Thus, suggestions to improve client-centered lawyering also draw on the theory of rebellious lawyering and theoretics of practice to change the underlying discourse between lawyer and client.<sup>51</sup> With rebellious lawyering, the emphasis is on the client: how the client's life - including her membership in an outsider group and her group's history of subordination - defines the legal problem, generates the solutions, and determines the course of action.<sup>52</sup> With this emphasis, the client might

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<sup>50</sup> I consider my position as a clinical supervisor to be part of my cultural makeup because my experience as a supervisor in a legal services practice in New York City and Boston have given me a cultural perspective and set of values that I hope is more open to issues of poverty, race, and other differences. In addition, it is possible that the client reacted to me differently because of culturally-based expectations of a person with higher lawyer status.

<sup>51</sup> Jacobs, *supra* note 18, at 402-05; Shalleck, *supra* note 30, at 1748-51.

<sup>52</sup> Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608 (1989). See also Jacobs, *supra* note 18, at 402-03 ("We cannot allow our students to practice on a client without seeing the client's reality."); and Shalleck, *supra* note 30, at 1749-50 (describes rebellious lawyering as using a client's stories to solve problems, by accepting the client's knowledge and experience as part of the legal action).

more effectively participate as an equal in the decision-making process.<sup>53</sup>

With theoretics of practice, the emphasis is on the lawyer: how can the lawyer understand the “assumptions, biases, values, and norms embedded in the law’s workings in order to heighten awareness of the political and moral choices made by lawyers and the legal system”?<sup>54</sup> How can the lawyer “listen[ ] to and describ[e] clients in a way that does not impose upon them categories constructed by lawyers”?<sup>55</sup>

Both rebellious lawyering and theoretics of practice describe approaches to bridging the gap - cultural and power-based - between lawyers and clients who are different from each other. Building this bridge is not an easy task. Empathy and active listening may elicit more details from the client, and questioning the premises of the American legal system may help the lawyer consciously to avoid its biases. But the lawyer’s cultural lens will operate automatically to filter this information and to create expectations about the lawyer-client interaction. So, unless the lawyer understands her own culture and the ways it affects her interactions with others, she risks perpetuating the status quo of discrimination.<sup>56</sup>

More recently, concerns about the human impact of lawyering has led to developments in “the comprehensive law movement,”<sup>57</sup> which have implications for addressing the culture gap between lawyer and client. The movement has not developed specifically as a response to this gap, but rather out of a concern that law exacts a heavy price on lawyers, clients, and others involved in litigation.<sup>58</sup> Overall,

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<sup>53</sup> Lopez, *supra* note 52, at 1608. Jacobs, *supra* note 18, at 402-03.

<sup>54</sup> Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 719-22 (1992).

<sup>55</sup> Shalleck, *supra* note 30, at 1751.

<sup>56</sup> APA Guidelines, *supra* note 16, at 21. WANDA M.L. LEE, AN INTRODUCTION TO MULTICULTURAL COUNSELING 15 (1999). A counselor who is not culturally self-aware risks “cultural encapsulation,” or viewing the world from only her cultural lens. TRACY L. ROBINSON & MARY F. HOWARD-HAMILTON, THE CONVERGENCE OF RACE, ETHNICITY, AND GENDER: MULTIPLE IDENTITIES IN COUNSELING 11 (2000). Cultural encapsulation is dangerous because it can cause errors in interpretation, strategy, and communication. Lee, *supra* note 56, at 15.

<sup>57</sup> The “comprehensive law movement,” a term coined by Susan Daicoff, refers to ten “theoretical and practice-based approaches . . . that aim to ‘optimize[ ] human well-being’ and focus[ ] on ‘extra-legal concerns,’ including the emotions of those involved and relationships.” Hartley & Petrucci, *supra* note 10, at 135, quoting Susan Daicoff, *The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement* in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 465-67 (Dennis P. Stolle et al. eds., 2000). The ten approaches are preventive law, therapeutic jurisprudence, procedural justice, restorative justice, facilitative mediation, transformative mediation, holistic law, collaborative law, creative problem solving, and specialized courts. *Id.* at 135 n. 12.

<sup>58</sup> See generally Susan Daicoff, *The Comprehensive Law Movement*, 19 Touro L. Rev.

the comprehensive law movement utilizes humanistic and interdisciplinary approaches to reconceptualize the lawyer's and the legal system's interactions with the client in ways that consider explicitly the client's context. This concern can lead to a focus on client context, which encompasses a client's cultural and other group membership. Because the movement seeks in part to improve contextualized outcomes for clients, it draws on generalist social work<sup>59</sup> methods to improve lawyer-client relationships and the effectiveness and reputation of legal systems.<sup>60</sup> A generalist social work model trains the professional to interact with clients at the individual, small group, and agency or community levels so that the "organizational context" of the client is integral to any interaction.<sup>61</sup> As part of that contextual interaction, the client's culture is vital, and the professional must learn to interact in a client-centered,<sup>62</sup> culturally competent manner.<sup>63</sup>

Training in multicultural lawyering brings together the approaches championed by rebellious lawyering, theoretics of practice, and the comprehensive law movement by "combin[ing] personal growth with content learning and skill development."<sup>64</sup> As a starting point, multiculturalists focus on a broad understanding of culture as "unstated assumptions, shared values, and characteristic ways of perceiving the world that are normally taken for granted by its members."<sup>65</sup> Multicultural lawyering training teaches the student to be

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825, 825-35 (2004).

<sup>59</sup> A generalist social worker has "knowledge and skills [that] encompass a broad spectrum and [ ] assess[es] problems and their solutions comprehensively." Hartley & Petrucci, *supra* note 10, at 140 n.43 quoting ROBERT L. BARKER, *THE SOCIAL WORK DICTIONARY* 190 (4<sup>th</sup> ed. 1999)

<sup>60</sup> *Id.* at 135.

<sup>61</sup> *Id.* at 140-41.

<sup>62</sup> In social work, client-centeredness entails "be[ing] where the client is." *Id.* at 143. Thus, if the client believes that she experiences discrimination in her daily interactions, then the professional must acknowledge that perspective to be effective in working with the client. *Id.* at 144.

<sup>63</sup> *Id.* at 141.

<sup>64</sup> Lee, *supra* note 56, at 196. "The cognitive distance between the mental health service providers and the lower class and minority consumers can be bridged through didactic instruction, but the social and emotional distance can be reduced only through an intensive program of reeducation of the counselors, one aimed at changing their attitudes." *Id.* at 196 (quotation omitted). *But see* RIDLEY, *supra* note 39, at 24-25: "Consciousness raising is an inadequate method of combating racism." Instead, Ridley advocates changing racist behavior because behavior is easier to change. *Id.* at 24-25.

<sup>65</sup> ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 11 (quotation omitted). Bryant provides a list of factors that influence culture, including "ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigrant status, religion, accent, skin color." Bryant, *supra* note 18, at 41. This article accepts these factors as cultural influences but notes that race, ethnicity, and national origin remain particularly salient in American culture.

aware of the cultural basis for his own behavior and champions using “a ‘cultural lens’ as a central focus of professional behavior . . . recogniz[ing] that all individuals including themselves are influenced by different contexts, including the historical, ecological, sociopolitical, and disciplinary.”<sup>66</sup> Thus, the student develops a “personal-cultural orientation” toward lawyering in which she considers how her and others’ behavior is guided by culturally learned expectations and values.<sup>67</sup> With such knowledge and regular practice, the student is better equipped to develop more accurate decision making that is less biased by the cultural backgrounds of either the lawyer or the client or by the complexity of the problem presented.<sup>68</sup>

## II. CURRENT METHODS OF TEACHING MULTICULTURAL LAWYERING

To develop this personal-cultural orientation, multicultural counseling trainers recommend a three-fold approach: developing awareness and knowledge of one’s own culture; developing awareness of the client’s culture; and learning specific skills to minimize the impact of one’s own biases and prejudices toward the multicultural interaction.<sup>69</sup> Within each of these domains, students focus on becoming competent cognitively, affectively, and behaviorally.<sup>70</sup>

By contrast, some of the literature of multicultural lawyering emphasizes developing awareness of the client’s culture, without delving into developing cultural self-awareness. For example, Stefan Krieger and Richard Neumann urge that students acquire “an instinct for situations where another person’s cultural assumptions may be very different from yours.”<sup>71</sup> To develop this instinct, they suggest a three-step process: (1) learn about the other cultures an attorney is most likely to encounter; (2) anticipate situations in which taking culture

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<sup>66</sup> APA Guidelines, *supra* note 16, at 11.

<sup>67</sup> Both common sense and empirical studies support the proposition that culturally learned beliefs about differences among cultural groups affect interpersonal interactions across groups. Hartley & Petrucci, *supra* note 10, at 162. These beliefs need not be stereotypes but are often social constructions, or “cultural characterizations or popular images individuals hold that serve to define certain groups in society.” *Id.* at 163-64. “The more strongly held the social construction, the more resistant are the attitudes associated with the construction to new and contradictory information.” *Id.* at 164.

<sup>68</sup> Bryant, *supra* note 18, at 56; RIDLEY, *supra* note 39, at 56.

<sup>69</sup> Arredondo & Arciniega, *supra* note 16, at 266. SUE & SUE, *supra* note 16, at 224-25. The benefit of this approach is that it is a competence model - in contrast with earlier models, which “suggest something or someone needs to be fixed,” Arredondo & Arciniega, *supra* note 18, at 265-66 - and thus “provides guidelines and developmental benchmarks for adaptive cognitive, emotional, and behavioral attributes.” *Id.* at 266.

<sup>70</sup> *Id.* at 265-66; Bryant, *supra* note 18, at 48; ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 272; SUE & SUE, *supra* note 16, at 17.

<sup>71</sup> KRIEGER & NEUMANN, *supra* note 18, at 53.

into account will improve lawyering and plan non-stereotyped, non-offensive behavior; and (3) apologize in a prompt and straightforward manner if a mistake occurs.<sup>72</sup> Thus awareness of the other, rather than of the self, takes precedence.

Paul Tremblay, like Krieger and Neumann, urges lawyers to anticipate the most likely areas of cultural differences and the way these differences affect the multicultural interaction. But whereas Krieger and Neumann do not detail cultural differences, Tremblay identifies six areas in which differences are most likely to occur - proxemics,<sup>73</sup> kinesics,<sup>74</sup> time and priority considerations,<sup>75</sup> narrative preferences,<sup>76</sup> relational perspectives,<sup>77</sup> and scientific orientation.<sup>78</sup> Tremblay posits that knowledge of cultural differences in these areas will assist the lawyer in avoiding cultural blunders.<sup>79</sup>

The law students I work with tend to turn first to this kind of substantive cultural training when working with a client who appears racially or ethnically different from themselves. This inclination is not wrong, but too narrow a focus on knowledge of cultural difference carries several risks. A 1992 study by Stephan and Stephan reveals that one risk of a narrow focus is anxiety about difference affecting interaction. In this study, the authors followed a group of American students going to Morocco, to consider how the students handled immersion in a new culture.<sup>80</sup> The students received lectures on cultural differences and classes on the history and culture of Morocco prior to their arrival. However, upon their arrival in Morocco, this instruction did not improve the students' interactions. Instead, the study determined that the students' increased awareness of the differences between the cultures, of their own cultural incompetence, and of the

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<sup>72</sup> *Id.*

<sup>73</sup> Tremblay, *supra* note 18, at 389-92 ("perception and use of personal and interpersonal space")

<sup>74</sup> *Id.* at 392-95 ("way in which bodily movements are used and interpreted;" i.e. expressions, eye contact, hand shakes, posture, gestures)

<sup>75</sup> *Id.* at 395-96.

<sup>76</sup> *Id.* at 396-99.

<sup>77</sup> *Id.* at 400-03 (individual vs. collective orientations)

<sup>78</sup> *Id.* at 403-06 (acceptance or not of science e.g., medicine through science or faith)

<sup>79</sup> *Id.* at 385-86. Tremblay also warns students to beware the trap of book knowledge. He labels his suggestions "heuristics" to emphasize the necessity of "train[ing] lawyers in the discipline of naïveté and in accepting the tentativeness of our assumptions, with 'informed not-knowing.'" *Id.* at 407. He also advises students to cultivate their own cultural identities, including acknowledging biases and oppression that their culture contains. *Id.* at 414.

<sup>80</sup> The study was conducted by Stephan and Stephan to determine how empathy and attributional complexity (the tendency to attribute complex causes to other's behavior) affect immersion in a new culture. Jacobs, *supra* note 18, at 398-401.

pitfalls in navigating the culture increased the students' anxiety.<sup>81</sup> Stephan and Stephan hypothesize in part that a better instructional method, namely a combination of lectures and simulation, would more effectively help students to interact with a culture different from their own by allowing the students to practice using the substantive cultural knowledge they had acquired.<sup>82</sup>

Many students react to a culturally different client with an anxiety similar to that of the students' in the Stephan and Stephan study. That anxiety then can manifest in multiple ways: as unconscious avoidance - the student who postpones meeting with a disability client diagnosed with Post-Traumatic Stress Disorder for fear of asking questions about the illness and having to cope with the client's responses; or tentativeness during the interaction - the student who self-consciously shies away from eye contact with an Asian-American client; or overeagerness - the student who recalls her repertoire of high-school Spanish to greet a Guatemalan client.<sup>83</sup> These reactions are counterproductive; they overemphasize the cultural differences between lawyer and client and, therefore, interfere with the creation of a secure, nonjudgmental environment in which the lawyer and client can interact.<sup>84</sup>

A second risk is that a focus on cultural knowledge can give students "a false sense of accomplishment"<sup>85</sup> that the acquisition alone of such knowledge enables them to work with members of that particular culture.<sup>86</sup> This sense can cause students to resist exploring their own

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<sup>81</sup> *Id.* at 400.

<sup>82</sup> *Id.* at 400-01. This combination of substance knowledge and simulation, of course, is central to clinical pedagogy.

<sup>83</sup> At first glance, the effort to communicate with a client in his primary language might not seem culturally insensitive, as the student intends the exchange to respect the client's culture and to put him at ease. However, the impact on the client might be quite different. As Lisa Navarete of the National Council of La Raza commented after the first Democratic presidential candidates' debate held in Albuquerque, NM, on September 4, 2003, regarding the candidates' efforts at Spanish, "'Speaking Spanish is nice, . . . [b]ut it's not really what the Latino community is looking for, and it's not what they're going to vote on.'" "¿Quién es más gringo?" *BOSTON GLOBE*, Sept. 7, 2003, at A26.

<sup>84</sup> Wehrly points out that substantive knowledge of the client's culture is helpful as a means of establishing the counselor's credibility with the client: does the counselor prove to be an "effective and trustworthy helper" by appropriately using the substantive knowledge and giving something of value to the client at each session? WEHRLY, *supra* note 22, at 172.

<sup>85</sup> *Id.* at 140.

<sup>86</sup> The "cookbook approach" to diversity training - chapter 1 Working with African Americans; chapter 2 Working with Latinos, etc. - can lead students to "'buy into' the content of a particular manuscript or 'expert.'" *Id.* at 172. The prevalence of such manuscripts and their often unavoidable length in multicultural competence manuals lend further credence to their importance that can outweigh the brief warnings not to accept whole cloth generalizations about cultural differences. See, e.g., *LAWYERS AS COUNSELORS*, *supra* note 25, at 32-40 (the section on stereotyping consists of approximately one page of text

cultures and attitudes toward other cultural groups<sup>87</sup> and can reinforce the notion of the client as “the other.” If, however, a student understands her relationship to her own culture and the ways that culture creates or reinforces stereotypes, she might not presume that information on cultural differences is accurate for a given client, and she might alter her lawyering to fit the actual client, not the essentialized one.

For example, a student who had a Central American woman client seeking a divorce worried that the client might not feel entitled to any marital property because the student had heard that Latina women generally had a different conception of marital property than the one espoused by Massachusetts divorce law. The student therefore planned a counseling session to educate the client about Massachusetts law and empower her to ask for her legal entitlement. I encouraged the student not to assume that the client held this belief but to inquire directly of the client before she launched her planned counseling. The student did inquire of the client, and the client indicated a very strong sense of entitlement to marital property, including payment of debt.

A third risk is that the student who is unaware of his own culture may not examine his reactions to information about a different culture for unconscious biases or prejudices that impair cultural competence. An infamous example of the use of cultural information in a manner that reinforced cultural stereotypes occurred in the case of Dong Lu Chen, a Chinese immigrant<sup>88</sup> who had killed his wife with a claw hammer because he believed she was having an affair.<sup>89</sup>

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but the section describing cultural differences necessarily takes more space, here approximately three pages). Pedersen warns against the “presumption that multiculturalism in counselor education is merely accumulating additional knowledge about other cultures, without regard to the underlying assumptions or the consequent skills that are necessary.” Pedersen, *supra* note 16, at 209 (citation omitted). Similarly, Bryant warns that, as students “learn specific cultural rules, [they] have to be careful to apply them correctly and to guard against substituting them for information about the client.” Bryant, *supra* note 18, at 86-87. Some of the risks a cookbook approach entails are that obstacles that arise in the lawyering relationship might be attributed to personal difference rather than institutional practice and preference and that these differences might be seen as deficiencies that leave intact White American culture as the norm. See Lisa C. Ikemoto, *Racial Disparities in Health Care and Cultural Competency*, 48 ST. LOUIS U. L. J. 75, 100 (2003) (noting that cultural competence training that “describes a set body of ‘facts’ about the exotic other can reinscribe existing stereotypes”).

<sup>87</sup> WEHRLY, *supra* note 22, at 140 (citation omitted).

<sup>88</sup> Chen and his wife had been living in the United States for approximately one year when he killed her. Leti Volpp, *(Mis)Identifying Culture: Asian Women & the “Cultural Defense,”* 17 HARV. WOMEN’S L.J. 57, 65 (1994). I base the discussion that follows on Volpp’s account of the trial and sentencing hearing.

<sup>89</sup> *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988). This article does not discuss the merits of using a cultural defense, as does Volpp’s article. Rather, this

At the bench trial, Chen's attorney presented a "cultural defense:" that Chinese values about adultery, community, and saving face had caused Chen to kill his wife and, therefore, that Chen had acted without criminal intent.<sup>90</sup> The defense came in through the testimony of a white male anthropologist, Burton Pasternak.<sup>91</sup> Pasternak posited that a Chinese male would react to adultery by his wife "in a much more volatile, violent way" than an American male like himself would.<sup>92</sup> He further pontificated that the Chinese values of the sanctity of family and the need for collective social control over the behavior of individuals effectively required a man to act against an adulterous wife to reaffirm the cultural values, to reassert control over his wife, and, through these corrective measures, to maintain his desirability as a partner to other Chinese women.<sup>93</sup> Indeed, Pasternak asserted that these values were so prevalent that they effectively were voices that Chen carried with him constantly.<sup>94</sup> Pasternak added that a Chinese male cuckold in the United States would suffer even more than he would in China because he would not be able to find a white woman partner due to sexual stereotypes regarding Chinese men and, as a "pariah" within the Chinese-American community, would be unable to find a new Chinese partner or general support.<sup>95</sup>

On its face, the legal strategy employed by Chen's attorney, Stewart Orden, might appear to epitomize multicultural lawyering. The strategy, after all, took into consideration the defendant's cultural background and attempted to explain that background (at least as depicted by Pasternak) to the court to benefit the client legally.<sup>96</sup> However, a primary goal of multicultural lawyering is applying generalized

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article considers how the expert's testimony and his audience's reaction to it were filtered through each one's cultural lens.

<sup>90</sup> Volpp, *supra* note 88, at 64.

<sup>91</sup> Pasternak may have been a dubious expert. On cross examination, he cited as sources for his depiction of Chinese culture fieldwork he had conducted from the 1960s to 1980s, including some incidents he had seen or heard about. He failed, however, to remember even his own articles on the subject. *Id.* at 70. His qualifications and the court's acceptance of them point out the difficulty of determining the reliability of cultural information and raise questions about how a person decides to accept generalized cultural information.

<sup>92</sup> *Id.* at 66 (citations omitted). Pasternak in fact identified himself as an "average American." *Id.* at 70 (citation omitted).

<sup>93</sup> *Id.* at 68-69 (citation omitted). Pasternak implicitly assumed that Chinese women also accept this cultural view.

<sup>94</sup> *Id.* at 68 (citation omitted).

<sup>95</sup> *Id.* at 69-70 (citation omitted).

<sup>96</sup> Indeed, the defense strategy might have reflected Mr. Chen's preference. For instance, the defendant, who apparently had heard voices since 1968 - *id.* at 64 (citation omitted) - might have been unwilling to plead insanity due to an aversion to being labeled insane or to being held in a psychiatric facility should an insanity defense succeed or to serving a long(er) prison sentence.

cultural knowledge accurately in light of an individual's circumstances.<sup>97</sup> The cultural defense put forth by Orden instead undermined this goal.

From a multicultural perspective, a problem with the defense employed on Chen's behalf is that it is suffused with assumptions and stereotypes about American and Chinese culture. At the core of the defense is a belief that "American" and "Chinese" are "two utterly distinct categories: 'American' does not encompass immigrant Chinese."<sup>98</sup> This belief underlies Pasternak's assertions (1) that a Chinese man would act differently from an American man who learned that his wife was having an affair; (2) that regardless of his mental health, a Chinese man would react violently to this knowledge, especially given the social pressure to control his family; and (3) that a Chinese man whether living in a China that has more contact with American culture or in the United States would not have incorporated American cultural beliefs (presumably, in this context, a less violent reaction to marital infidelity).<sup>99</sup> Thus, Pasternak's testimony began and ended on the premise of an essentialized Chinese man, rooted in a culture completely foreign from American culture and inassimilable.

Pasternak seemed not to realize that his essentialization of a Chinese man was rooted in his perception of himself as an "average American." This self-identification reveals his ignorance of his own culture - in which non-Chinese men also kill their wives - and its long-standing, historic depiction of all Chinese as the consummate foreigners.<sup>100</sup>

Aspects of this premise were accepted by the prosecutor, Arthur Rigby, and the judge, Brooklyn Supreme Court Justice Edward Pincus. Rigby, for example, accepted the categorization of China as an insular, backwards country when he asked whether China had been liberalized since the United States normalized diplomatic relations with the current regime.<sup>101</sup> Pincus, while recognizing that some Chi-

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<sup>97</sup> See *infra* pp. 389-90.

<sup>98</sup> Volpp, *supra* note 88, at 66 (citation omitted). According to Pasternak, "American" does include "white Anglo-Saxons, Jews, Blacks, Puerto Ricans, and Roman Catholics." *Id.* at 71 n. 64 (citation omitted).

<sup>99</sup> *Id.* at 67-72 (citation omitted).

<sup>100</sup> *Id.* at 66 n. 43. As an historical example, Volpp quotes Justice Harlan's dissent in *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting): "There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race." In addition, Volpp points out that Pasternak's "fetishization" of the Chinese people follows the tradition of Orientalism, which delineates Asians as the ultimate "other" from Westerners, including Americans. Volpp, *supra* note 88, at 71-72.

<sup>101</sup> *Id.* at 72 (citation omitted).

nese immigrants might assimilate,<sup>102</sup> explained that the “very cogent forceful testimony of Doctor Pasternak” led him to believe that Chen had killed his wife because he both carried the voices of his Chinese values with him and lacked the “safety valve” of a Chinese community to prevent his attack on her.<sup>103</sup> Pincus therefore convicted Chen of second degree manslaughter and sentenced him to five years’ probation.<sup>104</sup>

Because we, like Pasternak, Rigby, and Pincus, filter substantive information through our own cultural lens, we must be vigilant in confronting our own biases and prejudices and beware stereotyping the individual client with whom we are working.<sup>105</sup> As Sue Bryant admonishes, the culturally competent lawyer must acknowledge her own cultural persona, analyze how it affects the client relationship, acquire knowledge about the client’s culture but apply it accurately, and interact based on the actual details of the client’s circumstances.<sup>106</sup> By starting with cultural self-awareness, the lawyer is better able to understand the client’s culture and the interaction of the two cultures. Thus, the key to developing multicultural competence is cultural self-awareness.<sup>107</sup>

For practical guidance to develop cultural self-awareness, students can turn to the five habits for cross-cultural lawyering that Bryant and Jean Koh Peters have devised.<sup>108</sup> The habits are designed to

<sup>102</sup> Pincus noted that “‘Were this crime committed by the defendant as someone who was born and raised in America, or born elsewhere but primarily raised in America, *even in the Chinese American community,*’” he would have found Chen guilty of first degree manslaughter. *Id.* at 73 (citation omitted) (emphasis added).

<sup>103</sup> *Id.* at 73 and 67 n. 46 (citation omitted).

<sup>104</sup> *Id.* at 64 and n. 26 (citation omitted). Indeed, the court integrated its new knowledge of Chinese culture into the sentencing decision:

‘And I must have a promise from the defendant on his honor and his honor of his family he will abide by all of the rules and conditions that I impose . . . . And if he does not obey and he violates any of these conditions, not only does he face jail, but this will be a total loss of face.’

*Id.* (citation omitted)

<sup>105</sup> Bryant, *supra* note 18, at 53-54; Tremblay, *supra* note 18, at 415-16.

<sup>106</sup> Bryant, *supra* note 18, at 86-87; Tremblay, *supra* note 18, at 408-09.

<sup>107</sup> Tremblay, *supra* note 18, at 415-16; Jacobs, *supra* note 18, at 395.

<sup>108</sup> Bryant, *supra* note 18, at 33. The habits are: (1) Degrees of Separation and Connection (charting similarities and differences between lawyer and client and considering their significance); (2) The Three Rings (expanding Habit 1 to include the legal decision-maker); (3) Parallel Universes (exploring alternative interpretations to client behavior); (4) Red Flags and Remedies (paying conscious attention to multicultural communication); and (5) The Camel’s Back (developing self-awareness to understand situations that make distortion more likely). The five habits are the product of collaboration between Bryant and Jean Koh-Peters that began in the early 1990s. Along the way, the collaboration has produced numerous presentations on teaching multicultural lawyering and supported Koh-Peters’ work in child advocacy, in particular as supplemental materials in her book, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL

encourage awareness cognitively, emotionally, and behaviorally. For example, Habit 1, Degrees of Separation and Connection, focuses on cognition and behavior: it asks students to identify similarities and differences between the student and the client and to consider how these aspects affect information gathering/ processing and professional distance/judgment.<sup>109</sup> By deliberately identifying similarities and differences, the lawyer can challenge assumptions about himself and the client, probe for facts, and lawyer based on fact.<sup>110</sup> Habit 5, The Camel's Back, encourages cultural self-awareness, specifically with regard to bias and stereotype. First, the student identifies factors like stress, lack of control, and burn out that disrupt the lawyer-client interaction and make bias and stereotype more likely to intrude. That identification permits proactive efforts to minimize future interference. Second, and in conjunction with Habit 1, the student identifies client traits and personal traits that cause the lawyer to treat the client with insensitivity.<sup>111</sup>

Because of their concreteness, the habits for cross-cultural lawyering and Tremblay's related heuristics add depth to the process espoused by Krieger and Neumann and are particularly valuable in clinical teaching. Their use helps students to change behavior to foster better lawyering for the individual client; the culturally-aware lawyer might hear the client's narrative more accurately and relay it to the legal decision maker with less distortion<sup>112</sup> or engage the client more fully in a decision to exploit a cultural stereotype. In addition, Krieger and Neumann's reminder to apologize can help to repair re-

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DIMENSIONS, originally published in 1997 and now in its second edition.

Habit 5 is designed specifically to address cultural self-awareness, although Habits 1 through 4 require some cultural self-awareness to work effectively. Bryant notes that other teachers have questioned the decision to make cultural self-awareness the last habit rather than the first. Bryant explains the decision thus: "Habit [5] can be the most difficult in that it asks the student to face the sometimes ugly side of cultural blinders - bias and stereotype. Moreover, the other Habits give insight and understanding that may ultimately help students recognize bias." Bryant, *supra* note 18, at 77. Although I agree that engaging cultural self-awareness can be a difficult process for students, my hope is that awareness of the social and cognitive processes that automatically occur in human interactions can help to diffuse the reactions to facing the "ugly side of cultural blinders" and to encourage students to engage in reflection and analysis, not judgment or blame. Hence my suggestion to teach psychology explicitly as preparation for and alongside the concrete Habits.

<sup>109</sup> *Id.* at 64-68.

<sup>110</sup> *Id.* at 66-68.

<sup>111</sup> Susan Bryant & Jean Koh-Peters, *Five Habits for Cross-Cultural Lawyering: A Work in Progress* 34, available at <http://cleaweb.org/multiculture/multiculture.pdf> (last visited on August 20, 2004) (copy on file with author); Bryant, *supra* note 18, at 77-78.

<sup>112</sup> Bryant, *supra* note 18, at 56 (the "primary goal is . . . 'isomorphic attributions,' i.e., to attribute same meaning to behavior and words that the person intended to convey); Shallick, *supra* note 30, at 1751.

spect, trust, and open communication when mistakes in multicultural interactions occur.

Such mistakes are inevitable, sometimes because generalized cultural knowledge is inaccurate on its face or as applied to a specific client and sometimes because a behavior betraying bias or prejudice can occur automatically, before the habits, heuristics, and newly developing instinct kick in. Thus, to better inculcate an approach to multicultural interactions, an understanding of unconscious or automatic discrimination is necessary to supplement the habits and heuristics of multicultural lawyering.<sup>113</sup> This understanding is rooted in cognitive and social psychology, including the formation of cognitive categories or schemas, group behavior, and awareness of the individual's place within the dominant culture.<sup>114</sup>

### III. THE PSYCHOLOGICAL UNDERPINNINGS OF MULTICULTURAL LAWYERING TRAINING

Why is some understanding of cognitive<sup>115</sup> and social<sup>116</sup> psychology necessary? Because, currently in our society, we typically do not discriminate intentionally against people who differ from ourselves.<sup>117</sup>

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<sup>113</sup> Earlier studies have argued that, to reduce prejudice and discrimination, the perceiver must be aware of her bias and be motivated to change these biases based on personal values. However, more recent studies suggest that personal motivation and self-awareness are not the only ways to decrease prejudice. Rather, implicit positive attitudes associated with White Americans can be weakened significantly by exposure to different societal cues and social contexts. For example, one experiment repeatedly exposed participants to images of famous and admired Black Americans and to infamous and disliked White Americans. The results demonstrate at least a temporary, significant reduction in automatic racial associations. Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals*, 81 J. PERSONALITY AND SOCIAL PSYCHOL. 800 (2001), available at [http://www.apa.org/journals/psp/press\\_releases/november\\_2001/psp815800.html](http://www.apa.org/journals/psp/press_releases/november_2001/psp815800.html) (last visited July 23, 2004). Cf. Poirier, *supra* note 12, at 1120-21 (need "to address head-on the source of cognitive tagging of social roles with gender traits" to equalize women's participation in professional employment).

<sup>114</sup> Poirier, *supra* note 12, at 1076, 1085.

<sup>115</sup> Cognitive psychology concerns the study of human cognition, including attention, perception, learning, memory, thinking, problem solving, decision making, and language. *Cognitive psychology*, in ANDREW M. COLMAN, A DICTIONARY OF PSYCHOLOGY (2001), available at <http://www.oxfordreference.com/views/ENTRY.html?subview=main&entry=T87.e1617> (last visited February 2, 2005).

<sup>116</sup> Social psychology concerns the study of social behavior of individuals or groups, such as attitudes, social compliance, conformity, obedience to authority, interpersonal attraction, attribution processes, group processes, helping behavior, and non-verbal communication. *Social psychology*, in ANDREW M. COLMAN, A DICTIONARY OF PSYCHOLOGY (2001), available at <http://www.oxfordreference.com/views/ENTRY.html?subview=CMAin&entry=T87.e7760> (last visited February 2, 2005).

<sup>117</sup> The APA reports that "many people who firmly believe that they have open and favorable attitudes about people of various races and ethnicities will demonstrate that they implicitly (unconsciously) harbor a variety of racial and ethnic prejudices that can translate

So, lawyers treat clients in culturally insensitive ways due to “unconscious or aversive racism,”<sup>118</sup> which can stem from categorization errors that characterize cognitive functioning<sup>119</sup> and from unconscious tendencies to favor members of social groups similar to themselves over members of other groups.<sup>120</sup> Learning more about these psychological processes provides a basis for understanding how lawyers behave in ways that cause discrimination and, therefore, how to assess their own beliefs and lawyering practices.<sup>121</sup>

A lawyer who understands that he has subconscious cognitive categories - called schemas - and that the way he automatically employs them can cause subordinating treatment might be less defensive about acknowledging that his *behavior* is discriminatory. In addition, awareness of how a schema is created might enable a dominant-culture lawyer to understand how that culture influences the contents of his schemas<sup>122</sup> and to make conscious efforts to diversify his interactions

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into subtle discriminatory behaviors.” APA amicus brief, *supra* note 8, at 6. For example, in one study, the participants consistently made quicker associations between faces of African Americans and words with negative concepts - such as bomb, devil, awful - than they did between faces of White Americans and words with positive concepts - such as peace, joy, and love. *Id.* at 8.

In another study, the researchers considered how employers reacted to African-American sounding names (Lakisha, Jamal) compared to White American sounding names (Emily, Greg) in the labor market. The researchers answered approximately 5,000 classified advertisements, sending a set of four resumes to each posting. Each set of resumes included two better qualified applicants and two lesser qualified applicants. The study demonstrated two levels of discrimination: White-American sounding names received 50% more call backs than African-American sounding names, and the better resume assisted White-American sounding names by 30% but only minimally assisted African-American sounding names. Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination* 2-3, available at [http://papers.ssrn.com/abstract\\_id=422902](http://papers.ssrn.com/abstract_id=422902) (last visited August 3, 2004).

Social scientists warn that unconscious racism is more likely among helping professionals. This racism occurs because “[c]ounselors often assume that their good intentions automatically make them helpful[,]” and, therefore, do not monitor the consequences of their behavior. RIDLEY, *supra* note 39, at 10-11.

<sup>118</sup> Poirier, *supra* note 12, at 1073 and n.2; RIDLEY, *supra* note 39, at 10.

<sup>119</sup> Krieger, *supra* note 18, at 1165.

<sup>120</sup> RIDLEY, *supra* note 39, at 13-15. Ridley describes this group thinking as “either/or thinking” in which we place people into single, mutually exclusive categories with the subtle belief that our own group is superior, or in some cases supreme. This kind of thinking seems to be the type engaged by Pasternak in his testimony on behalf of Dong Lu Chen. See *supra* pp. 386-89.

<sup>121</sup> RIDLEY, *supra* note 39, at 15.

<sup>122</sup> Poirier, *supra* note 12, at 1075 (calling gender schemas “mechanisms of dominance and subordination”). Social scientists posit that, “[i]f we meaningfully change that world - ‘the larger societal context that controls these phenomena’ - we can thereby change individuals’ classification strategies and thus reduce both unconscious bias and its behavioral effects.” RIDLEY, *supra* note 39, at 15. Indeed, research indicates that “positive exposure to members of other racial groups helps reduce such biases.” *Id.* at 13. (citing Irene V.

and to question the contents of his schemas in an effort to act with more accuracy regarding members of different cultures.<sup>123</sup> Such a change could more easily allow the client's life, including her membership in an outsider group and that group's history of subordination, to define the legal problem, generate the solutions, and determine the course of action.<sup>124</sup>

Let us consider then, how schemas are created and how they affect our behavior: A lawyer meeting a client automatically places the client into a cognitive category or schema. The schema itself is not inherently bad. Rather, it is simply a means of organizing information "to identify objects, make predictions about the future, infer the existence of unobservable traits or properties, and attribute the causation of events."<sup>125</sup> A schema thus enables people to process information quickly and largely automatically.<sup>126</sup> We create our schemas through the experience of our daily lives, from personal encounters, second-hand information, the media, etc. Behavior becomes associated with race, gender, age, roles, and character traits, and event scripts<sup>127</sup> develop through repetition.<sup>128</sup> With regard to people, physical characteristics like skin color, gender, and age are readily perceived and therefore are more likely to become salient features in our cognitive categories.<sup>129</sup> Each category then becomes a prototype or reference point for the people we meet, and we interact with others based on the category that is activated.<sup>130</sup> If we do not question the expectations evoked by the activated category, insensitive behavior can result.<sup>131</sup>

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Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCHOL. REV. 242 (2002)).

<sup>123</sup> APA Amicus Brief, *supra* note 8, at 12-13 (citations omitted). Meaningful encounters with new racial information require the individual to develop new schema and behaviors to cope with the new information, and if these new schema and behaviors are effective, the individual can develop a more mature cultural identity status that allows more accurate, autonomous multicultural interaction. Hartley & Petrucci, *supra* note 10, at 167.

<sup>124</sup> Shalleck, *supra* note 30, at 1749-50 (describes rebellious lawyering as using a client's stories to solve problems by accepting the client's knowledge and experience as part of the legal action).

<sup>125</sup> Krieger, *supra* note 18, at 1188-89. Taylor-Thompson, *supra* note 18, at 1290-91.

<sup>126</sup> APA Guidelines, *supra* note 16, at 19 (citation omitted).

<sup>127</sup> An event script is the expectation of a "particular sequence of causally related events." Krieger and Neumann give the example of a script for going to a restaurant: being seated, getting a menu, giving one's order, and being served. KRIEGER & NEUMANN, *supra* note 18, at 131.

<sup>128</sup> Poirier, *supra* note 12, at 1093; KRIEGER & NEUMANN, *supra* note 18, at 131.

<sup>129</sup> Poirier, *supra* note 12, at 1093-94.

<sup>130</sup> Krieger, *supra* note 18, at 1200-01.

<sup>131</sup> Indeed, a person with low levels of prejudice "must be conscious of the stereotype as stereotype in order to avoid unconscious reliance on it." Taylor-Thompson, *supra* note 18,

For example, at an AALS clinical education conference, I was approached by a fellow clinician who, out of the blue, wanted to know if I knew the Hong Kong - U.S. dollar exchange rate. What had struck him most about me was not that I am a clinician or an American - even though we were in Canada - but that I look (and am) Asian (-American), and my ethnicity evoked a schema that said Asian appearance = Hong Kong = foreigner, so he asked his question.<sup>132</sup>

This kind of social categorization operates on an automatic level. Based on one's own characteristics, a person sorts others into "in-groups" sharing characteristics with the perceiver and "out-groups" that do not.<sup>133</sup> The separation of others into in-groups and out-groups further influences the way in which the perceiver views others. So, if a lawyer has limited experience with members of different cultures, then the behavior of those few members of the out-group culture becomes more salient and may be seen as representative of that culture.<sup>134</sup> In addition, the perceiver may use her in-group as a reference point for interpreting her own behavior as well as that of others.<sup>135</sup> On a subconscious level, she may exaggerate differences among groups and favor members of her in-group over members of out-groups.<sup>136</sup> "In-groups are more highly valued, more trusted, and engender greater cooperation as opposed to competition, and those with the strongest in-group affiliation also show the most prejudice."<sup>137</sup>

A problem with schemas is that they are susceptible to unconscious biases and stereotyping. A stereotype is "a generalized description of a group of people that has usually developed over time on the basis of cross-cultural interactions."<sup>138</sup> Because a stereotype can be-

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at 1289. Cf. KRIEGER & NEUMANN, *supra* note 18, at 180-81 (advising attorneys to evaluate credibility of witnesses by considering schemas used in processing facts)

<sup>132</sup> I didn't know the answer.

<sup>133</sup> APA Guidelines, *supra* note 16, at 19 (citation omitted).

<sup>134</sup> The presence of only one member of an out-group makes that one person's presence more distinctive and memorable so that a stronger schema can result. Krieger, *supra* note 18, at 1192, 1194-95.

<sup>135</sup> Lee, *supra* note 56, at 10-11.

<sup>136</sup> APA Guidelines, *supra* note 16, at 19-20 (citations omitted). "Prejudice occurs when a person takes his or her own group as the positive reference point from which to judge other people negatively." Lee, *supra* note 56, at 10.

<sup>137</sup> APA Guidelines, *supra* note 16, at 19-20 (citations omitted). Taylor-Thompson describes a chilling example of group-related bias in a study regarding perceptions of a criminal defendant's honesty or guilt. The participants watched a simulated robbery trial and then had to reach a unanimous verdict and, if that verdict was of guilt, recommend a sentence. The "defendant" did not testify at trial, and the participants saw him only when he entered a plea of not guilty. The study determined that majority white juries were less likely to believe the defendant to be honest when he was Latino and also more likely to convict with recommendations for the maximum sentence. Taylor-Thompson, *supra* note 18, at 1293 (describing study conducted by Dolores Perez in 1993).

<sup>138</sup> APA Guidelines, *supra* note 16, at 11 (citation omitted). Familiarity with a stereo-

come ingrained in a schema, the stereotype can create an unconscious expectation that a specific individual will behave in conformity with the stereotype.<sup>139</sup> If the expectation is distorted or illusory - as it was in the case of Dong Lu Chen - then the perceiver might unconsciously be biased in the way she interacts with the client.<sup>140</sup>

When the client comes from a culture different from the lawyer's, the risk of stereotyping is greater.<sup>141</sup> Experience with members of the client's culture that was seen as negative is more readily recalled,<sup>142</sup> and thus the lawyer runs the risk of expecting negative behavior and finding it, whether or not it actually occurred.<sup>143</sup> In addition, the lawyer is more likely to attribute behaviors of the out-group client to character traits if the behaviors fit the expectation and to situational factors if the behavior seems aberrant.<sup>144</sup> Then, the lawyer might start to label the client who does not return phone calls as rude or uncaring instead of considering that work, personal, child-related, or other factors might cause the delay.<sup>145</sup>

Given these problems with cognitive schemas, one might become discouraged, wondering whether we could ever become culturally competent. Explicit discussion of the schemas and stereotypes we hold, however, might enable us to uncover the hidden assumptions.<sup>146</sup> Thus, the teaching of nonracist behaviors, coupled with cognitive and

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type should not imply prejudice, which is the "endorsement of negative attitudes toward and stereotypes about groups." *Id.* at 21; Taylor-Thompson, *supra* note 18, at 1291.

<sup>139</sup> Poirier, *supra* note 12, at 1098-99; APA amicus brief, *supra* note 8, at 10 (citations omitted)

<sup>140</sup> Krieger, *supra* note 18, at 1198.

<sup>141</sup> *Id.* at 1204.

<sup>142</sup> *Id.* at 1192. By contrast, the lawyer typically has more data about members of her culture so that she is able to understand the complexity of factors at play in an interaction with another in-group client. *Id.* at 1194-95. Hence the habit of parallel universes: thinking of alternative, often situational explanations for behavior.

<sup>143</sup> *Id.* at 1208.

<sup>144</sup> *Id.* at 1205-07. For example, "failures" by members of an out-group are more likely to be attributed to the person than to the situation. But when a failure occurs with members of an in-group, the in-group observer has greater familiarity with the group and more data about the groups from which to posit complex external factors leading to failure. *Id.* at 1207.

<sup>145</sup> Jean Koh Peters tells the story of a student who was unable to reach his/her client. The student dutifully, if rotely, recited alternative explanations for this failure (Habit 3) but clearly did not consider them credible. Finally, on the day of court, the client did appear, and the student learned that she had given birth in the interim. Jean Koh Peters, *Access to Justice: The Social Responsibility of Lawyers: Habit, Story, and Delight, Essential Tools for the Public Service Advocate*, 7 WASH. U. L.J. & POLICY 17, 19 (2001).

<sup>146</sup> Taylor-Thompson, *supra* note 18, at 1288-89. At BCLAB, a common student assumption is that a client will not want to discuss her mental illness, even if it is the basis for a disability claim. Consequently, in supervision, we will discuss this concern, including questioning whether it is the student's own discomfort with mental illness, grounded in cultural stigma, which is the basis for concern. Typically, once the student has met the client, the student will be surprised at the client's openness about the illness.

social psychology, can help lawyers to examine their values, biases, and prejudices and therefore to change their behaviors and attitudes.

To consider how schema are created and can affect behavior, let us review the situation of my student working with the public housing tenant. When the student began the clinic, her experience with legal clients was scarce. At that time, her schema of a client was her mother - a white, small-business owner, married to a minister. The student could not imagine her mother lying, especially to her lawyer, or being financially irresponsible. Thus, her encounter with the client who lied was a startling event. The student might incorporate this experience into her existing client schema. Her client schema might now recognize that clients might lie or, more specifically, that poor, black American clients might lie. The next time she were to encounter a poor, black American client, she would automatically recollect this schema. That recollection might give rise to an expectation that this new client would lie. If, however, the student were to recognize that such an expectation might be generalized and generalized on too little information, then she might act differently toward this next client. She might, for example, consciously remind herself that this is a different individual, she might remember the discussion we had about why the earlier client might have lied, and she might prepare a more nonjudgmental response should the current client lie.

#### IV. TEACHING CULTURAL SELF-AWARENESS AS PART OF MULTICULTURAL LAWYERING TRAINING

An understanding of social and cognitive psychology can provide a foundation on which to develop cultural self-awareness, which is essential to multicultural competence.<sup>147</sup> Cultural self-awareness enables the lawyer to understand that her culture - including ingrained "beliefs, values, and attitudes"<sup>148</sup> - shapes her unconscious assumptions and influences her interactions with people of different cultures.<sup>149</sup> Through cultural self-awareness, a lawyer can develop an understanding of her own heritage, which will "provide[ ] a firm base for understanding and respecting the world views of people with dif-

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<sup>147</sup> Arredondo & Arciniega, *supra* note 16, at 266; PEDERSEN, *supra* note 16, at 203; and WEHRLY, *supra* note 22, at 48. Bill Ong Hing has commented that recognizing how "personal identification differences," such as class, race, ethnicity, gender, disability, and age, (all part of a student's cultural self-awareness) affect lawyering seems common sensical but nonetheless requires training. Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1808-10 (1993).

<sup>148</sup> APA Guidelines, *supra* note 16, at 23-24.

<sup>149</sup> *Id.* at 23-25; and WEHRLY, *supra* note 22, at 109-10.

ferent ethnic, cultural, and racial heritages.”<sup>150</sup>

To develop cultural self-awareness competency, a student must work through three domains: attitudes and beliefs, knowledge, and behavioral skills.<sup>151</sup> The framework presented below is not linear in nature but rather identifies issues that a student encounters as he acknowledges himself as a cultural being. Permeating this framework is the premise that “unlearning racism [or oppression] is the first step a [lawyer] must take on the path of developing cultural awareness.”<sup>152</sup> By oppression, I mean not prejudice, which is “negative attitudes, beliefs, and intentions,”<sup>153</sup> but behavior that perpetuates social inequality.<sup>154</sup> To perpetuate social inequality, the actor must have power, whether perceived or real.<sup>155</sup> Power can come by virtue of membership in a cultural group. In a lawyer-client relationship, the lawyer holds power by virtue of her role and cultural dynamics.<sup>156</sup>

This distinction between intentions and effects is crucial to developing multicultural competency, as it enables the lawyer to focus on behavior (hence the third domain), which is easier to change than the

<sup>150</sup> WEHRLY, *supra* note 22, at 110. The premise of cultural self-awareness is that appreciation of the significance of culture in one’s own life allows one to appreciate the significance of culture in another person’s life. Thus, “It is not possible to be a competent counselor without being culturally competent.” Robert T. Carter, *Becoming Racially and Culturally Competent: The Racial-Cultural Counseling Laboratory*, J. MULTICULTURAL COUNSELING AND DEV., at 20, 21 (2003).

<sup>151</sup> ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 272-73; and SUE & SUE, *supra* note 16, at 224-25.

<sup>152</sup> Lee, *supra* note 56, at 16. Lee Anne Bell, *Theoretical Foundations for Social Justice Education*, in *TEACHING FOR DIVERSITY AND SOCIAL JUSTICE: A SOURCEBOOK 3, 4* (Marianne Adams et al. eds. 1997) I substitute the term “oppression” for racism because my perspective on multicultural competence includes cultural differences other than those limited to racial and ethnic groups. Use of the term oppression “emphasize[s] the pervasive nature of social inequality woven throughout social institutions as well as embedded within individual consciousness” and encompasses the problems of intersectionality of gender, class, etc. *Id.* at 4-5.

<sup>153</sup> RIDLEY, *supra* note 39, at 17-18. An example of racial prejudice is the “assumption that traits and abilities are determined biologically and one race is therefore inherently superior.” Lee, *supra* note 56, at 12. A person might hold stereotyped images in her schema, but if she does not endorse the stereotype, then she is not exhibiting prejudice. Taylor-Thompson, *supra* note 18, at 1291.

<sup>154</sup> Bell, *supra* note 152, at 5-6 (explaining that oppression manifests through different kinds of discrimination such as racism, sexism, classism, heterosexism, ageism, and ableism); see RIDLEY, *supra* note 39, at 17, 20-21 (advocating determination of racism from the consequences, not the causes, of the behavior).

<sup>155</sup> RIDLEY, *supra* note 39, at 21-22; WEHRLY, *supra* note 22, at 167-68. Unfortunately, the presence of power also makes developing multicultural competence more difficult. The “persistent nature of [cultural] stereotypes and misinformation and a keen desire to preserve in-group status” make the powerholder more resistant to exploring social inequality and acknowledging her own role in maintaining that inequality. Hartley & Petrucci, *supra* note 10, at 165.

<sup>156</sup> WEHRLY, *supra* note 22, at 168.

underlying, automatic assumptions ingrained in our schema<sup>157</sup> and to work through the defensiveness that can accompany discussions of oppression, both historical and contemporary.

First, the student ponders her own attitudes and beliefs: Does she recognize that she has a culture?<sup>158</sup> Does she believe that cultural self-awareness is important? Is she aware of how her culture shapes her attitudes, values, biases, and assumptions about lawyering? Does she recognize the limits of her own multicultural competency? What makes her comfortable or uncomfortable working with cultural similarity and difference?<sup>159</sup> This domain is probably the most difficult for law students to develop, as law students tend to favor reason over emotions.<sup>160</sup> In addition, society and legal training acculturate students into blindness toward cultural differences and the privileges that can accompany group membership.<sup>161</sup> However, examination of one's attitudes and beliefs - and the emotions that examination can arouse - can pay dividends for client interaction by helping the lawyer to develop empathy for clients, which in turn can enhance rapport and information gathering,<sup>162</sup> to understand client goals and interests, and to provide more comprehensive representation.

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<sup>157</sup> RIDLEY, *supra* note 22, at 24-25.

<sup>158</sup> Members of the dominant white American culture may not recognize that such a culture exists. In many instances, "Whites do not see themselves as White. Often, American or *human* being is used as a descriptor." ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 278 (emphasis in original) (citation omitted). De-racializing the culture can occur because "Whites in the United States learn that they are entitled to privileges associated with being White and learn to deny or distort race-related reality in order to protect the status quo." Lee, *supra* note 56, at 51. Thus, an early step for members of a dominant culture is acknowledging the prevalence of cultural discrimination in the United States. *Id.* at 16-18.

<sup>159</sup> PEDERSEN, *supra* note 16, at 203; and ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 272-73.

<sup>160</sup> Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259, 278 (1999). Silver notes that on the Myers-Brigg scale, lawyers tend to fall in the thinker category rather than the feeler category.

<sup>161</sup> ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 61, 68. See Lee, *supra* note 56, at 13-14 (describing cognitive dissonance White Americans can experience in trying to reconcile their receipt of benefits and privileges in a society that discriminates against racial and ethnic minorities and their efforts to rationalize that dissonance by denying their participation in racism). Indeed, legal education long has ignored the effects of race and culture on the lawyer-client relationship, preferring instead to consider race and culture as a strategic tool, to be used, for example, in jury selection, Hartley & Petrucci, *supra* note 10, at 165, or developing a narrative to appeal to the fact-finder, KRIEGER & NEUMANN, *supra* note 18, at 158 (awareness of the likely schema of one's audience helps the lawyer to shape his/her narrative).

<sup>162</sup> See Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLIN. L. REV. 135, 136 (2002) (explaining that empathy helps information gathering because "the lawyer is called upon to feel as the other does not only to solicit information but also to understand more fully the import of the speaker's words").

Students from the dominant culture may not recognize that they have a culture. For example, during a discussion on culture, a white male student told me that he did not think he had a culture as a white male. When I asked, he identified sources of values, attitudes, and beliefs (his family, his geographic base, and schools he had attended) but did not think that they added up to a unitary, coherent culture. I asked then about people whom he thought have such a culture. As the student hails from Texas, he named Mexican immigrants. We then considered how someone from Mexico might respond if asked to identify her culture, first while in Mexico and then again when transplanted to the United States. We also considered why another person might identify the immigrant's culture as Mexican. The student then realized that awareness of culture is easier when one stands outside the dominant culture. Indeed, the student did not consider himself to be a Texan culturally, as he is not a cowboy or rancher and had been more interested in education than his peers. Rather, he feels comfortable in Boston even though he often is perceived as a Texan in Boston. Thus, the student recognized, first, that, even though he perceives nuance and differentiation in his own world view and its development, those nuances and differences might not be visible to others, and, second, that his world view is recognizable as a culture to others and therefore ultimately to himself.

Second, the student consciously considers specific knowledge. The focus on specific knowledge - which can be drawn from fieldwork, personal experience, simulations, readings, etc. - leads to processing the information gleaned<sup>163</sup> and then to the formulation of abstract concepts and generalizations that will assist the students in new situations.<sup>164</sup> Some examples of the different kinds of knowledge to study follow:

With regard to her own culture, she might consider how the media portrays homeless people, alcoholics, women, the elderly, and others she is more likely to encounter as clients in the clinic.

With regard to "how oppression, racism, discrimination, and stereotyping are perceived"<sup>165</sup> by members of different cultures, she might consider reports indicating the different perceptions of the prevalence of discrimination in the United States by members of different racial groups.

With regard to her own style of lawyering, she might recognize

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<sup>163</sup> Journals and in-class discussion are useful for this purpose. Lee Anne Bell & Pat Griffin, *Designing Social Justice Education Courses*, in *TEACHING FOR DIVERSITY AND SOCIAL JUSTICE: A SOURCEBOOK* 44, 56-58 (Marianne Adams et al. eds. 1997).

<sup>164</sup> *Id.* at 56-58.

<sup>165</sup> PEDERSEN, *supra* note 16, at 203.

that it is “culturally learned and culturally specific,”<sup>166</sup> with its own impact on her clients and others.<sup>167</sup> For example, she might consider how a preference for chronological story telling may clash with another culture’s preference for narrative or how her office’s policy of scheduling interviews during 9-to-5 business hours affects poorer clients who are hourly wage earners.

Another way to explore this domain more comprehensively is to start with personal experience, looking for patterns of behavior or of client reactions and then to trace the patterns to their cultural sources. For example, I consider my own experience at a workshop on cross-cultural supervision. We engaged in an exercise in which each attendee listed a number of supervisees with whom each had a good relationship and supervisees with whom each had a challenging relationship. The trainees then considered each category of supervisees for patterns. As I considered my lists, I realized that I most frequently had difficulty supervising white male students. The specific difficulties varied from student to student, and I could recall very good relationships with white male students, but the pattern was clear: my most difficult supervisory relationships were with white men.

This pattern led me to consider first what in my experience made it harder for me to work with white men. Looking first at my family of origin, I realized that its Confucian-based culture that inculcated deference to men as authority figures might make it harder for me to assert my own authority. Moving beyond my family, I further realized that, as a group (Taiwanese Americans), we all further deferred to white men in particular as powerholders, and that this experience might cause additional interference with the exercise of authority. Indeed, I then recalled an incident in which a white male student asked me on the first day of a legal research and writing class for all the writing assignments upfront as he did not need to attend class because he had won awards for legal writing.<sup>168</sup> Because of that incident, might I be hesitant to supervise? Or too aggressive in supervision in an effort to preempt anticipated insubordination? I also considered my views toward white law students in particular. When a white male student demonstrated poorer analytical or writing skills, was I guilty of holding him to a higher standard because of an assumption that white students overall have better analytical and writing skills than students of color at the school?

I also reviewed aspects of white American male culture that might affect the students’ interaction with me. When I raised con-

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<sup>166</sup> *Id.*

<sup>167</sup> ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 272-73.

<sup>168</sup> Of course, I denied his request.

cerns with empathy in a white male student's interaction with a client, did he dismiss these concerns as "touchy feely" because I am a woman? Was a student resentful of the emphasis on client interaction skills when previously he had earned praise for his classroom work? Were stereotypes about Asian women (usually not authority figures, litigators, or law professors) and assumptions about age and experience (yes, I look younger than I really am, and I am the youngest and most junior supervisor in my clinic program) affecting their reception of my supervision?

Armed with these considerations, I can reevaluate my approach to supervision generally and to white male students specifically in ways that take into account my culture, their culture, and the interaction of the two. Possibilities include: are my automatic lawyering expectations of white male students unfair? Am I transferring prior bad experiences with white men on them? Do I need to develop more comfort and confidence in my own authority? Do I need to be more explicit, with examples, of my expectations and of their expectations? Do I ask about concerns with our multicultural supervision?

Third and finally, building on her knowledge, the student acquires skills that enhance her multicultural competence and seeks out opportunities to practice them. The skills help her to continue the process of understanding herself as a cultural being, limitations and all, and to develop a nonracist identity.<sup>169</sup> As noted above, discrimination typically occurs through the consequences of behavior, not through the intentions of the actor. Thus, by identifying specific behaviors that might be oppressive and nonoppressive, a lawyer can reinforce nonoppressive behaviors and fair practices.<sup>170</sup> Bryant and Koh-Peter's Five Habits and Tremblay's heuristics can be valuable here to help students anticipate cultural differences and to acquire good behaviors, which can be reinforced and replicated through simulations, classroom discussion, supervision and fieldwork.<sup>171</sup> And when missteps occur, Krieger and Neumann's reminder to apologize promptly can help to repair damage to a relationship and perhaps lead to better information on how to adjust one's behavior in the future.

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<sup>169</sup> PEDERSEN, *supra* note 16, at 203; ROBINSON & HOWARD-HAMILTON, *supra* note 56, at 272-73.

<sup>170</sup> RIDLEY, *supra* note 39, at 25-26.

<sup>171</sup> "To prevent a relapse into racism, nonracist behaviors and fair practices must be acquired, reinforced, and carefully monitored." *Id.* at 26. The practices espoused by Bryant, Koh-Peters, and Tremblay are also useful in steps one and two of Krieger and Neumann's process of developing an instinct for multicultural situations.

## V. CONCLUSION

As a legal services attorney, I have attended numerous diversity training programs.<sup>172</sup> In retrospect, the superficiality of most programs is reminiscent of the reasoning of the *Grutter* opinion, being perfunctory nods to the market reality that legal services clients are frequently more diverse than the service providers. As a result, most programs fell short, being one-time, three-hour workshops in which the attendees mouthed platitudes about diversity, looked bored, and sometimes participated in an exercise, usually to identify individual cultural group memberships. There was often little explanation of the purpose of the exercise, little time for reflection and processing, and no specifics as to cultural knowledge or skills to develop.<sup>173</sup> Nor was their discussion about implicit discrimination, that gap between good intentions and discriminatory outcomes. Because the goal of the training was superficial (better service provision to clients who are different) there was no discussion of what multicultural competence should entail affectively, cognitively, or behaviorally.

These experiences lead me to suggest some changes to diversity training for lawyers and law students. The training should not be about learning racial etiquette in a diverse economy but about learning multicultural competence with the explicit goal of empowering culturally different clients (and colleagues) as part of a larger effort to end discrimination. Being explicit about the goal<sup>174</sup> would allow a clearer, more realistic framework for understanding the never-ending progression toward multicultural competence and a basis for questioning and challenging the techniques and experiences we encounter on that journey. As the framework is based on psychosocial concepts that most lawyers are probably unfamiliar with, introductory training

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<sup>172</sup> For a critical review of diversity training, see generally ELISABETH LASCH-QUINN, *RACE EXPERTS: HOW RACIAL ETIQUETTE, SENSITIVITY TRAINING, AND NEW AGE THERAPY HIJACKED THE CIVIL RIGHTS REVOLUTION* 161-93 (2001).

<sup>173</sup> Pedersen identifies three ways in which multicultural competency training can fail: (1) an exclusive focus on awareness of one's own cultural biases and prejudices, without training on what to do with this awareness; (2) an overemphasis on acquiring knowledge of cultures without linkage to skills and behaviors; and (3) an overemphasis on skills, which can be applied in culturally inappropriate ways if not linked to awareness and knowledge. PAUL PEDERSEN, *A HANDBOOK FOR DEVELOPING MULTICULTURAL AWARENESS* 26 (2d ed. 1995).

<sup>174</sup> Some educators advise us to give our students the theory up front because theory enables us to think clearly about our intentions and the means we use to actualize them in the classroom. It provides a framework for making choices about what we do and how, and for distinguishing among different approaches. . . . [A]t its best, theory also provides a framework for questioning and challenging our practices and creating new approaches as we encounter inevitable problems of cooptation, resistance, insufficient knowledge, and changing social conditions. . . ."  
Bell, *supra* note 152, at 4.

in these concepts also would be beneficial - especially in overcoming defensiveness and denial about a personal role in perpetuating discrimination and in developing greater consciousness of the societal and institutional structures that may make individual cultural differences more salient.

This article attempts to provide some of the concepts, theory, and framework underlying multicultural competence training for the purpose of social justice, as developed by mental health practitioners.<sup>175</sup> By naming the goal - combating discriminatory behavior by lawyers - and laying bare the psychology that can cause us all unintentionally to discriminate against members of different cultural groups, I hope to engage law students and clinicians in a frank, structured, and ongoing journey toward multicultural competence.

The focus here is on the first step of that journey - the development of a culturally self-aware lawyer who is conscious of her own biases and values without favoring them over another's; aware of how his own values and biases affect clients from a different cultural group; comfortable with cultural difference; sensitive to circumstances that make it appropriate for a client to change lawyers; and aware of her attitudes, beliefs, and behaviors that may be oppressive.<sup>176</sup> From this base, the lawyer can actively develop an understanding of her client's culture and skills that will enable her to lawyer with multicultural competence.

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<sup>175</sup> The APA boasts, with justification, that mental health practitioners take cultural competency more seriously than do lawyers, for they are "driven by widespread awareness of treatment inadequacies for minorities" APA Amicus Brief, *supra* note 8, at 26, and view cultural competency as the responsibility of every practitioner. See generally APA Guidelines, *supra* note 16.

<sup>176</sup> SUE & SUE, *supra* note 16, at 228-29.